

1 **ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS**

2 In the Matter of the Escrow Agent License of:

No. 06F-BD055-BNK

3 **SCOTTSDALE TITLE COMPANY, L.L.C.**
4 8124 East Cactus Road, Suite 410
5 Scottsdale, Arizona 85260

CONSENT ORDER

6 Respondent.

7 On June 22, 2006, the Arizona Department of Financial Institutions ("Department") issued a
8 Notice of Hearing alleging that Respondent had violated Arizona law. Wishing to resolve this
9 matter in lieu of an administrative hearing, and without admitting liability, Respondent does not
10 contest the following Findings of Fact and Conclusions of Law, and consents to the entry of the
11 following Order.

12 **FINDINGS OF FACT**

- 13 1. Respondent Scottsdale Title Company, L.L.C. ("STC") is an Arizona limited liability
14 company authorized to transact business in Arizona as an escrow agent, license number
15 EA-0906681, within the meaning of A.R.S. §§ 6-801, *et seq.* The nature of Respondent's
16 business is that of engaging in or carrying on the escrow business or acting in the capacity of
17 an escrow agent within the meaning of A.R.S. § 6-801(6).
- 18 2. On or around January 11, 2006, the Department conducted an examination of STC's business
19 affairs. As a result of the examination, the Department discovered the following:
- 20 a. Respondent failed to maintain an adequate, systematic, internal control structure as
21 prescribed by A.R.S. § 6-841; failed to maintain records to enable the Superintendent
22 to reconstruct the details of each escrow transaction; and failed to maintain subsidiary
23 account records; specifically:
- 24 i. Failed to properly reconcile escrow deposit accounts. Respondent failed to
25 reconcile its escrow bank account since licensure, which was on or around
26 November 17, 2004;

- 1 ii. Failed to provide adequate follow-up on trust account reconciliation adjusting
- 2 items aged in excess of sixty (60) days;
- 3 iii. Failed to provide adequate follow-up on stale-dated checks in excess of six (6)
- 4 months;
- 5 1. An examination of Respondent's escrow trust bank account statement
- 6 revealed eighteen (18) checks aged in excess of six (6) months;
- 7 iv. Failed to review escrow trial balance reports regularly, which resulted in
- 8 overdrawn escrow balances; and
- 9 v. Failed to properly reconcile two (2) escrow trust accounts;
- 10 1. Failed to reconcile the escrow deposit account bank statement with the
- 11 escrow trial balance listings and the trust control general ledger;
- 12 2. Failed to provide the November 30, 2005 original bank statements for
- 13 both escrow trust accounts;
- 14 3. Failed to sign and review their November 30, 2005 reconciliation,
- 15 which was submitted during the Department's examination;
- 16 4. Failed to provide the Department with a complete escrow trial balance
- 17 listing. The following three (3) items were missing;
- 18 a. Date of escrow account opening;
- 19 b. Date of escrow account closing, and/or
- 20 c. Current account status (opened or closed);
- 21 b. Respondent failed to adequately maintain and accurately reconcile their escrow
- 22 deposit bank accounts with the escrow trial balance listings;
- 23 c. Respondent failed to timely submit its December 31, 2005 "Annual Financial and
- 24 Escrow Report" and failed to provide the Superintendent with the required
- 25 consideration of their internal control structure in accordance with generally
- 26 accepted auditing standards;

- i. Respondent failed to provide the Superintendent with the required audit within the extended deadline granted, which was June 12, 2006;
- d. Respondent failed to make and file, in the Superintendent's office, a true and correct report of the business of the agent; specifically:
 - i. Respondent failed to file their December 31, 2004 "Semi-Annual Financial and Escrow Report" by February 15, 2005;
 - ii. Respondent failed to provide all the required data in its "Semi-Annual Financial and Escrow Report" for the period ending June 30, 2005;
 - iii. Respondents incorrectly filed a "Semi-Annual Financial and Escrow Report" for the three (3) months ending September 30, 2005;
 - iv. Respondent failed to file its December 31, 2005 "Semi-Annual Financial and Escrow Report" within the specified time frame;
 - v. Respondent failed to file its December 31, 2005 "Annual Financial and Escrow Report" within the specified time frame;
 - vi. Respondent failed to file its December 31, 2005 "Semi-Annual Financial and Escrow Report" by June 12, 2006, which was the extended deadline granted by the Superintendent; and
 - vii. Respondent failed to file its December 31, 2005 "Annual Financial and Escrow Report" by June 12, 2006, which was the extended deadline granted by the Superintendent;
- e. Respondent failed to keep and maintain, at all times, a complete record of all escrow transactions and data that reflects their financial condition; specifically:
 - i. Failed to provide current and reliable financial statements;
 - ii. Failed to provide documentation supporting the financial information reported to the Superintendent in its "Semi-Annual Financial and Escrow Report" for the period ending June 30, 2005 and December 31, 2005; and

1 iii. Failed to provide documentation supporting the amount of escrow fees
2 reported on the "Quarterly Report of Gross Escrow Fees";

3 f. Respondents deviated at least fifty nine (59) times from their filed and approved
4 rates, schedule of fees, and/or every manual of classifications; specifically:

5 i. At least forty four (44) deviations were found at Respondent's Raintree
6 Branch; and

7 ii. At least fifteen (15) deviations were found at Respondent's Mesa Branch;

8 g. Respondent's escrow rate schedule contains discretionary and subjective
9 language, which permits escrow officers to decide, at their discretion, the
10 application of an additional work charge;

11 h. Respondent failed to provide adequate notice to the depositing buyer or seller that
12 sets forth the pertinent facts clearly and conspicuously; specifically:

13 i. Two (2) purchase transaction escrow files contained no instructions;

14 i. Respondent failed to provide to each depositing buyer or seller, within three (3)
15 business days, adequate notice of their right to earn interest on all deposited
16 monies;

17 i. Two (2) purchase transaction escrow files, set forth above, contained no
18 instructions;

19 j. Respondent failed to disclose to the buyer and seller of a residential dwelling that
20 the title insurance underwriter may offer a closing protection letter that provides
21 protection for the loss of escrow monies due to fraud or dishonesty of the escrow
22 agent;

23 i. Two (2) purchase transaction escrow files, set forth above, contained no
24 instructions;

25 k. Respondent failed to disclose, not later than three (3) business days after receipt
26 of any funds, to each buyer and seller of a residential dwelling that monies

1 deposited in an escrow account are not insured against loss from fraud or theft by
2 this state or the United States government;

3 i. Two (2) purchase transaction escrow files, set forth above, contained no
4 instructions;

5 l. Respondent failed to produce, for inspection to the Superintendent, any escrow
6 records of any escrow of which Respondent was an agent and Respondent failed
7 to preserve records for at least three (3) years after the final disbursement of
8 funds;

9 m. Respondent failed to maintain an adequate, systematic, internal control structure
10 as prescribed by A.R.S. § 6-841; specifically:

11 i. Failed to provide accurate supporting documentation for courier/express mail
12 fees;

13 ii. Failed to provide a calculation worksheet detailing the escrow rates charged;
14 and

15 iii. Failed to provide documentation supporting charges for "Documentation
16 Processing Fees" involving fourteen (14) files;

17 n. Respondent commingled fiduciary funds with corporate funds by booking
18 unearned fees to income; specifically:

19 i. Respondent took its \$85.00 dollar Reconveyance/Tracking fee as income prior
20 to the title being reconveyed in at least sixteen (16) transactions;

21 o. Respondent failed to maintain an adequate, systematic, internal control structure
22 as prescribed by A.R.S. § 6-841 and Respondent failed to maintain adequate
23 records; specifically:

24 i. Respondent's escrow files did not contain documentation indicating the
25 recording date for the deed of trust;

26 p. Respondent failed to specify the type of funds received for deposit; specifically:

- 1 i. Respondent is using or used "QuickBooks" computer software, which did not
2 specify the type of funds received for deposit;
- 3 q. Respondents failed to maintain an adequate, systematic, internal control structure
4 as prescribed by A.R.S. § 6-841; specifically:
- 5 i. Respondents does not have appropriate procedural internal controls involving
6 their Ironstone Bank operating account;
- 7 1. No separation of duties or dual control over the account; and
8 2. An independent contractor has signing authority on the account;
- 9 ii. Respondent's computer software program failed to provide a system to
10 prevent disbursing escrow funds before sufficient escrow monies were
11 received and deposited. This system failure resulted in a number of
12 overdrafts;
- 13 r. Respondent failed to comply with A.R.S. § 44-6852, which limits dishonored
14 check, draft, order, and/or note fees to \$25.00 dollars, plus actual charges;
15 specifically:
- 16 i. Respondent discloses a \$35.00 dollar fee for any check returned or unpaid;
17 and
- 18 s. Respondent failed to disclose to escrow parties their \$25.00 dollar per month
19 "Dormant Account Charge" for inactive outstanding escrow accounts balances
20 after six (6) months of inactivity.
- 21 3. The Department issued its Report of Examination on or around June 22, 2006,
22 detailing the above findings.
- 23 4. Respondent filed its Audited Annual Escrow Report with the Department on or
24 around July 27, 2006. In addition, on or around August 8, 2006, Respondent's Members submitted a
25 timely response to the Department's Report of Examination.
26 ...

1 5. Respondent presently seeks to cease its business operations and proceed to surrender
2 its escrow license in accordance with A.R.S. § 6-838.

3 **CONCLUSIONS OF LAW**

- 4 1. Pursuant to A.R.S. Title 6, Chapter 7, the Superintendent has the authority and duty to
5 regulate all persons engaged in the escrow agent business and with the enforcement of
6 statutes, rules, and regulations relating to escrow agents.
- 7 2. By the conduct set forth above in the Complaint, Respondent violated the following:
- 8 a. A.R.S. §§ 6-841(A) and (B), A.A.C. R20-4-702, and A.A.C. R20-4-704 by failing to
9 maintain an adequate, systematic, internal control structure; failing to maintain
10 records to enable the Superintendent to reconstruct the details of each escrow
11 transaction; and failing to maintain subsidiary account records;
- 12 b. A.R.S. §§ 6-834(A) and (B), § 6-841, § 6-840.01(A), A.A.C. R20-4-702 by failing to
13 adequately maintain and accurately reconcile its escrow deposit bank accounts with
14 the escrow trial balance listings;
- 15 c. A.R.S. §§ 6-832(A) and (C) by failing to timely submit their December 31, 2005
16 “Annual Financial and Escrow Report” and failing to provide the Superintendent with
17 the required consideration of its internal control structure in accordance with
18 generally accepted auditing standards;
- 19 d. A.R.S. § 6-832(B) by failing to make and file, in the Superintendent’s office, a true
20 and correct report of the business of the agent;
- 21 e. A.R.S. § 6-831 and § 6-847.02 by failing to keep and maintain, at all times, a
22 complete record of all escrow transactions and data that reflects its financial
23 condition;
- 24 f. A.R.S. § 6-846.04(A) by deviating at least fifty nine (59) times from their filed and
25 approved rates, schedule of fees, and/or every manual of classifications;
- 26 g. A.R.S. § 6-841(A) and A.A.C. R20-4-702 by using an escrow rate schedule

- 1 containing discretionary and subjective language, which permits escrow officers to
2 decide, at their discretion, the application of an additional work charge;
- 3 h. A.R.S. § 6-834(F) by failing to provide adequate notice to the depositing buyer or
4 seller that sets forth the pertinent facts clearly and conspicuously;
- 5 i. A.R.S. § 6-834(D) by failing to provide to each depositing buyer or seller, within
6 three (3) business days, adequate notice of their right to earn interest on all deposited
7 monies;
- 8 j. A.R.S. § 6-841.02(A) by failing to disclose to the buyer and seller of a residential
9 dwelling that the title insurance underwriter may offer a closing protection letter that
10 provides protection for the loss of escrow monies due to fraud or dishonesty of the
11 escrow agent;
- 12 k. A.R.S. § 6-841.03 by failing to disclose, not later than three (3) business days after
13 receipt of any funds, to each buyer and seller of a residential dwelling that monies
14 deposited in an escrow account are not insured against loss from fraud or theft by this
15 state or the United States government;
- 16 l. A.R.S. § 6-837(B), A.A.C. R20-4-702, and A.A.C. R20-4-703 by failing to produce,
17 for inspection to the Superintendent, any escrow records of any escrow of which
18 Respondents were an agent and failing to preserve records for at least three (3) years
19 after the final disbursement of funds;
- 20 m. A.R.S. § 6-841(B) and A.A.C. R20-4-702 by failing to maintain an adequate,
21 systematic, internal control structure;
- 22 n. A.R.S. §§ 6-834(A) and (B) and § 6-841(B) by commingling fiduciary funds with
23 corporate funds by booking unearned fees to income;
- 24 o. A.R.S. § 6-841(B)(3) and A.A.C. R20-4-702 by failing to maintain an adequate,
25 systematic, internal control structure;
- 26 p. A.R.S. §§ 6-843(A)(2) and (3), § 6-843(B), and A.A.C. R20-4-702 by failing to

- 1 specify the type of funds received for deposit;
- 2 q. A.R.S. § 6-841(B) by failing to maintain an adequate, systematic, internal control
- 3 structure;
- 4 r. A.R.S. § 44-6852 by failing to comply with the \$25.00 dollar limit for a dishonored
- 5 check, draft, order, and/or note fees; and
- 6 s. A.R.S. § 44-305 by failing to disclose to escrow parties their \$25.00 dollar per month
- 7 "Dormant Account Charge" for inactive outstanding escrow accounts balances after
- 8 six (6) months of inactivity.
- 9 3. Respondent has not conducted business in accordance with the law and violated Title 6,
- 10 Chapter 7 and the rules relating to this chapter, which are grounds for license denial,
- 11 suspension, or revocation pursuant to A.R.S. § 6-817(A)(2).
- 12 4. Respondent failed to establish that it is able to pay debts as they fall due in the regular course
- 13 of business, which is grounds for license denial, suspension, or revocation pursuant to A.R.S.
- 14 § 6-817(A)(1).
- 15 5. Respondent failed to establish whether it is in such financial condition that it can continue in
- 16 business with safety to their customers or the public, which is grounds for license denial,
- 17 suspension, or revocation pursuant to A.R.S. § 6-817(A)(3).
- 18 6. Respondent has disbursed monies in violation of escrow instructions, which is grounds for
- 19 license denial, suspension, or revocation pursuant to A.R.S. § 6-817(A)(11).
- 20 7. Respondent has failed to furnish the Superintendent, within a reasonable time, certain
- 21 records, which is grounds for license denial, suspension, or revocation pursuant to
- 22 A.R.S. § 6-817(A)(8).
- 23 8. Respondent has failed to maintain an adequate control structure, which is grounds for license
- 24 denial, suspension, or revocation pursuant to A.R.S. § 6-817(A)(12).
- 25 9. The violations, set forth above, constitute grounds for the pursuit of any other remedy
- 26 necessary or proper for the enforcement of statutes and rules regulating escrow agents in

1 Arizona pursuant to A.R.S. §§ 6-123 and 6-131.

2 10. Pursuant to A.R.S. § 6-132, Respondent's violations of the aforementioned statutes are
3 grounds for a civil penalty of not more than five thousand dollars (\$5,000.00) for each
4 violation for each day.

5 **ORDER**

6 1. Respondent shall immediately cease from any further of the violations set forth in the
7 Findings of Fact and Conclusions of Law.

8 2. Respondent shall immediately file with the Superintendent a certified copy of the Resolution
9 of its Board of Directors or a Verified Statement of Intent signifying its desire to immediately
10 surrender its escrow agent license to the Department.

11 3. Respondent shall not accept any further escrow business.

12 4. Respondent shall comply with A.R.S. § 6-838 and shall provide to the Department the
13 following within thirty (30) days of the entry of this Order:

14 a. A certified copy of the resolution of the escrow agent's board of directors or a
15 verified statement indicating its intent to surrender the escrow agent license.

16 b. A copy of the final reconciliation for all escrow bank accounts including copies of the
17 reconciliation form, bank statement, outstanding checks list, deposit in transit list,
18 trial balance of escrows and any adjusting entries and the April, May, June, and July
19 2006 preliminary reconciliations are due by October 6, 2006.

20 c. A list of the escrow bank accounts transferred to buyer with copies of the checks,
21 evidencing the transfer of the escrow funds to buyer.

22 d. A list of the open and closed escrow account files transferred to buyer.

23 e. A statement indicating that no escrow business has been accepted since the effective
24 closing date.

25 f. A copy of the sales agreement between agent and buyer for the sale of the escrow
26 business.

- 1 g. A copy of the letter advising them of the transfer of escrow accounts to the new
2 buyer, sent to the parties of the open escrows.
3 h. The original escrow agent license.
4 i. A report of the arrangements made for storage of the closed escrow files. This
5 information should include a list of all the files placed in storage, the location of the
6 files and the name of the person to contact for retrieval.
7 j. Final payment to the Arizona Escrow Recovery Fund for the third quarter of 2006
8 (July 1, 2006 to September 30, 2006).

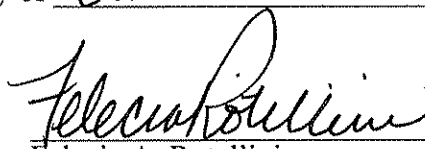
9 5. Respondent shall within thirty (30) days wind down and close all escrow files, or in the
10 alternative, transfer all remaining escrow files to an escrow agency licensed by the Department.

11 6. Respondent shall immediately notify its title insurance underwriter of its intent to surrender
12 its license within thirty (30) days. Further, Respondent shall advise its title insurance underwriter of
13 a possible shortage in its fiduciary accounts.

14 7. The provisions of this Order shall be binding upon Respondent, and resolves the Notice of
15 Hearing, subject to Respondent's surrender of its license, and the Superintendent's acceptance of
16 such surrender in accordance with the requirements of A.R.S. § 6-838. Upon compliance with such
17 requirements, the Department shall dismiss the Notice of Hearing and vacate any pending
18 administrative proceedings. In the event Respondent fails to so comply, the Superintendent may
19 vacate this Consent Order and proceed to hearing on the merits on any and all matters alleged in the
20 Notice of Hearing.

21 8. This Order shall become effective upon service, and shall remain effective and enforceable
22 until such time as, and except to the extent that, it shall be stayed, modified, terminated, or set aside.

23 SO ORDERED this 2nd day of October, 2006.

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26 Felecia A. Rotellini
Superintendent of Financial Institutions

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CONSENT TO ENTRY OF ORDER

1. Respondent acknowledges that it has been served with a copy of the foregoing Findings of Fact, Conclusions of Law, and Order in the above-referenced matter, has read the same, is aware of its right to an administrative hearing in this matter, and has waived the same.

2. Respondent admits the jurisdiction of the Superintendent and consents to the entry of the foregoing Findings of Fact, Conclusions of Law, and Order.

3. Respondent states that no promise of any kind or nature has been made to induce it to consent to the entry of this Order, and that it has done so voluntarily.

4. Respondent agrees to cease from engaging in the violative conduct set forth above in the Findings of Fact and Conclusions of Law.

5. Respondent acknowledges that the acceptance of this Agreement by the Superintendent is solely to settle and conclude this matter and does not preclude any other agency or officer of this state or subdivision thereof from instituting other proceedings as may be appropriate now or in the future.

6. George E. Griffith^e, on behalf of Scottsdale Title Company, L.L.C., represents he is the Managing Member of the company, and that, as such, has been authorized by Scottsdale Title Company, L.L.C. to consent to the entry of this Order on its behalf.

7. Respondent waives all rights to seek judicial review or otherwise to challenge or contest the validity of this Consent Order.

DATED this 2nd day of Oct., 2006.

RESPONDENT:

SCOTTSDALE TITLE COMPANY, L.L.C.

By. 

George E. Griffith

Its: Managing Member

1 ORIGINAL of the foregoing filed this 13th
2 day of OCTOBER, 2006, in the office of:

3 Felecia A. Rotellini
4 Superintendent of Financial Institutions
5 Arizona Department of Financial Institutions
6 ATTN: June Beckwith
7 2910 N. 44th Street, Suite 310
8 Phoenix, AZ 85018

9 COPY mailed same date to:

10 Diane Mihalsky, Administrative Law Judge
11 Office of the Administrative Hearings
12 1400 West Washington, Suite 101
13 Phoenix, AZ 85007

14 Craig A. Raby, Assistant Attorney General
15 Office of the Attorney General
16 1275 West Washington
17 Phoenix, AZ 85007

18 Robert D. Charlton, Assistant Superintendent
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23 George E. Griffeth, ~~President~~ *Member.*
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